

To: Legislative Colleagues

From: Representative Amy Loudenberg and Representative Janis Ringhand

Date: November 14, 2013

Re: Co-sponsorship of LRB 3571/1, relating to rule-making procedures and modifying certain rules promulgated by the Department of Workforce Development for the administration of the laws governing traveling sales crews.

Deadline: 4 PM on Wednesday, November 20, 2013

We are introducing two workforce development bills (LRB 3571/1 and LRB 3570/1) as part of the “Right the Rules” process this session. This legislation is a step toward bringing our Administrative Code up-to-date and making it easier to understand for businesses and citizens in the state.

The Assembly Committee on Workforce Development held two hearings to review rules that the Department of Workforce Development (DWD) has identified as needing modification or repeal. The committee had the opportunity to review the recommendations from DWD and hear from stakeholders who may be affected by specific rule changes.

LRB 3571/1 modifies the rule (DWD 273) governing Traveling Sales Crews (TSC). The changes bring clarity to employers and employees who are subject to TSC law. Specifically the change clarifies that the “worker permit” and “identification card” are the same document as well as allows employers the option of providing electronic pay stubs to TSC workers when issued on the same day as wages.

The analysis by the Legislative Reference Bureau is below and the bill draft is attached.

Analysis by the Legislative Reference Bureau

STATUTORY TREATMENTS

Rule-making procedures

Current law sets forth a procedure for the promulgation of administrative rules (rules). Generally, that procedure consists of the following steps:

1. The agency planning to promulgate the rule prepares a statement of the scope of the proposed rule, which the governor and the agency head must approve before any state employee or official may perform any activity in connection with the drafting of the proposed rule.
2. The agency drafts the proposed rule, together with an economic impact analysis, plain language analysis, and fiscal estimate for the proposed rule, and submits those materials to the Legislative Council Staff for review.
3. Subject to certain exceptions, a public hearing is held on the proposed rule.
4. The final draft of the proposed rule is submitted to the governor for approval.
5. The final draft of the proposed rule, together with an economic impact analysis, plain language analysis, and fiscal estimate for the proposed rule, are submitted to the

legislature for review by one standing committee in each house and by the Joint Committee for Review of Administrative Rules.

6. The proposed rule is filed with the Legislative Reference Bureau (LRB) for publication in the Wisconsin Administrative Code (code) and the Wisconsin Administrative Register (register), and, subject to certain exceptions, the rule becomes effective on the first day of the first month beginning after publication.

Under this bill, if a bill that repeals or modifies a rule is enacted, the ordinary rule-making procedures under current law do not apply. Instead, the LRB must publish the repeal or modification, in the code and the register, and the repeal or modification, subject to certain exceptions, takes effect on the first day of the first month beginning after publication.

TREATMENTS OF ADMINISTRATIVE RULES

Under current law, DWD has promulgated rules for the administration of the laws governing traveling sales crews, which are defined under current law as two or more individuals who are employed as salespersons or in related support work, who travel together in a group, and who are absent overnight from their permanent places of residence for the purpose of selling consumer goods or services from house to house, on any street, or in any other place that is open to the public.

Those rules include: 1) a rule requiring the employer of a traveling sales crew worker (worker) to provide payment to its employees on regularly agreed upon pay dates and to state clearly on a worker's paycheck, pay envelope, or paper accompanying the wage payment the number of hours worked, the rate of pay, and the amount of and reason for each deduction from the wages earned by the worker; and 2) a rule requiring a traveling sales crew operator (operator) to obtain a permit for each worker who works in this state and an operator and worker to carry the permit at all times while engaging in traveling sales crew activities.

This bill modifies those rules to require: 1) the employer of a worker to provide payment to its employees on regularly agreed upon pay dates, *which shall be no less often than semimonthly*, and to state clearly on a worker's paycheck, pay envelope, *pay stub*, other paper accompanying the wage payment, *or simultaneously issued electronic statement corresponding to the wage payment* the number of hours worked, the rate of pay, and the amount of and reason for each deduction from the wages earned by the worker; and 2) an operator to obtain a permit *and identification card* for each worker who works in this state and an operator and worker to carry the permit *and identification card* at all times while engaging in traveling sales crew activities.